TAN THIAM LOKE

v.

WOON SWEE KHENG, CHRISTINA

COURT OF APPEAL, SINGAPORE
LP THEAN J
CHAN SEK KEONG J
GOH JOON SENG J
[CIVIL APPEAL NO. 102 OF 1989]
1 OCTOBER 1991

TRUSTS: *Implied or constructive trust - Purchase of property by unmarried couple - Registered in the names of the plaintiff and the defendant as joint tenants - Mortgage payments made by defendant through plaintiff's account - Express oral agreement of absolute property as gift of love - Cannot operate as enforceable declaration of trust - Whether common intention that plaintiff to have property absolutely - Whether plaintiff acted to her detriment - Plaintiff only sought interest that was just - Interest of joint tenant in law and in equity.*

The plaintiff and the defendant met in 1975 and were contemplating matrimony; however unknown to the plaintiff, the defendant was already married. When the plaintiff learnt of this, the defendant told her that he would take steps to divorce his wife and thereafter would marry her.

In December 1977, a property was purchased and registered in the names of the plaintiff and the defendant as joint tenants. The price of the property was $76,000 and the initial deposit of $7,600 was paid by the defendant and the balance by way of a loan taken from Credit POSB Pte. Ltd. (POSB) and as security therefore the property was mortgaged to POSB.

In accordance with the terms of the mortgage, the plaintiff opened a savings account in her name with the POSB. The plaintiff moved into the house in or about May 1978 and looked after the house until early August 1979 when the plaintiff saw the defendant with another woman. On the same day, she telephoned the defendant's wife and learnt that no divorce proceedings had been instituted. The plaintiff left the house intending never to return to the defendant.

Thereafter, the mortgage instalments were paid directly by the defendant to POSB. By letter dated 19 July 1982, POSB informed the plaintiff that a certain sum being the instalments for May, June and July 1982 had been deducted from her account as the defendant was then in default of payment of the loan instalments.

On 13 October 1982, the plaintiff initiated these proceedings by originating summons seeking an order that the property be sold and that the proceeds of sale after payment of the amount secured on the property be divided between the plaintiff and the defendant in a manner as may be just.

In the High Court, the learned Judge made an order declaring the plaintiff to be the owner of the property absolutely and ordered that the property be sold and that the net proceeds of sale be paid to the plaintiff. He further ordered the defendant to deliver vacant possession of the property by the end of November 1989.

This was the defendant's appeal against that decision.

The question in this appeal is whether on the findings made by the learned Judge, the plaintiff was entitled to the whole of the property in equity, the legal title being held by both plaintiff and defendant as joint tenants.

Held:

[1] The Court was unable to accept the argument that the defendant is the party solely entitled to the whole of the property. The learned Judge found that the defendant had expressly agreed to give to the plaintiff the property absolutely and the property was transferred to the plaintiff and the defendant as joint tenants. Counsel has not shown that this finding of fact was in any way in error. Hence, at least to the extent of the interest of the plaintiff as joint tenant, the gift has been perfected and is unimpeachable. However, the gift of the entire property has not been perfected and the Court will not perfect an imperfect gift.

[2] The express agreement to give the property to the plaintiff absolutely was made orally and such oral agreement cannot operate as an enforceable declaration of trust. Hence, if the plaintiff is to succeed on the claim for the entire property it must be on the basis of an implied or constructive trust of the entire property in her favour. The question therefore is whether in the circumstances of this case, there arose an implied or constructive trust.

[3] There was a finding of fact by the learned Judge that the defendant had expressly agreed to purchase the property for the plaintiff absolutely and caused his name to appear on the title as a joint tenant as a mechanism to have some hold over the plaintiff and to prevent her from walking out on him. There was therefore a clear finding of a common intention that the plaintiff was to have the property absolutely.

[4] There was however no finding by the learned Judge that the plaintiff had acted upon that common intention to her detriment. It was also not the case of the plaintiff that acting upon that common intention she moved into the house and stayed with the defendant. Her reasons for moving into the house and staying with him were given in her affidavit. Hence, in this case, it cannot be maintained that her moving into the house and staying with the defendant amounted to acting upon the common intention that the house was hers absolutely. That was not her case on the basis of her evidence and the arguments advanced on her behalf. Nor did she found her claim on that basis.

[5] The plaintiff's interest in the property was that of a joint tenant with the defendant, that was the extent of her interest at law and in equity.

[6] Accordingly, the judgment of the High Court is to be varied in that, the plaintiff and the defendant own the said property as joint tenants and that the property be sold and the net proceeds of sale are to be paid to the plaintiff and the defendant in equal proportions. In all other respects, the judgment of the High Court is affirmed.

[Order accordingly.]

Cases referred to:

Gissing v. Gissing [1971] AC 886 ***(foll)***
Bernard v. Joseph [1982] 1 Ch 391 ***(cit)***
Eves v. Eves [1975] 1 WLR 1338 ***(foll)***
Grant v. Edwards & Anor. [1986] 1 Ch 638 ***(foll)***
Lloyds Bank Plc v. Rosset & Anor. [1991] 1 AC 107 ***(foll)***

Legislation referred to:

Law of Property Act 1925 [UK], s. 53(1)

For the appellant - S. Santhiran
For the respondent - J.B. Jeyaretnam

JUDGMENT

LP Thean J:

The relevant facts giving rise to this appeal are briefly these. The plaintiff first met the defendant sometime in December 1975. They became close friends and later were contemplating matrimony. However, unknown to the plaintiff, the defendant was already married. The plaintiff did not discover this until sometime in the middle of 1976, and when she confronted the defendant of this fact, he told her that he would be taking steps to divorce his wife and thereafter would marry her. The parties continued their relationship, but the defendant took no steps to divorce his wife.

In December 1977 or thereabout, a property known as No. 30, Jalan Gaharu, Singapore, was purchased and registered in the names of the plaintiff and the defendant as joint tenants. The price of the property was $76,000, and the initial deposit of $7,600 was paid by the defendant. The balance of $60,000 was paid by way of a loan taken from Credit POSB Pte Ltd (POSB), and as security therefore the property was mortgaged to POSB. In accordance with the terms of the mortgage the plaintiff opened a savings account in her name with Post Office Savings Bank, and a minimum sum of $3,000 was kept in her account. From December 1977 to December 1979 all the instalment payments to POSB were made by the defendant but through the plaintiff's account with the bank. The house was renovated and improved. The plaintiff moved into the house in or about May 1978 and lived with the defendant as his wife until early February 1979. Sometime in early February 1979 the plaintiff and defendant had a quarrel, as a result of which the plaintiff left the house. Thereafter, attempts were made by the defendant to effect a reconciliation and the plaintiff returned to the house to clean and maintain it. She looked after the house until about early August 1979. On 11 August 1979, the plaintiff saw the defendant with yet another woman; they were about to enter the house but turned away when they saw the plaintiff. The plaintiff then telephoned the defendant's wife and learnt that no divorce proceedings had been instituted. The plaintiff left the house intending never to return to the defendant.

Thereafter, the mortgage instalments were paid directly by the defendant to POSB. However, by a letter of 19 July 1982, POSB informed the plaintiff that a sum of $2,707.58 had been deducted from her account, being the instalment payments for May, June and July 1982; the defendant was then in default of payment of the loan instalments. Subsequently, there were attempts unsuccessfully made by the parties to resolve the matter relating to the property. On 13 October 1982, the plaintiff initiated these proceedings in Originating Summons No. 618 of 1982 seeking an order that the property be sold and that the proceeds of sale after payment of the amount secured on the property be divided between the plaintiff and the defendant in a manner as may be just. On 13 April 1984 an order was made directing the originating summons to proceed under O. 28 r. 8 and the affidavits filed to stand as pleadings. Eventually, the matter came on for hearing before Lai Kew Chai J.

At the hearing, the plaintiff's sister, Rosie Woon, gave evidence. She testified that at the material time the relationship carried on between the plaintiff and the defendant had caused a great deal of unhappiness to her mother, as the defendant was a married man. She said that one afternoon in July 1976, the defendant came to the house with the plaintiff and spoke to her mother. Rosie Woon herself was present. The defendant assured her mother that his relationship with the plaintiff was real, that he was instituting divorce proceedings against his wife, that she was 'like a black pearl in the deep blue sea,' that he intended to marry the plaintiff, that there was nothing to worry about and his intentions were honourable. He further told her that he intended to purchase a house for the plaintiff. As a result of the meeting,

her mother relented; the defendant subsequently was accepted and was introduced to other members of the family. Rosie Woon herself also said that she accepted that the defendant was sincere.

The plaintiff's evidence was as follows. She said that she met the defendant on 3 December 1975. At first she did not know of his marital status and she believed that he was single. They became very close. Later she discovered that he was married. She wanted to leave him but was assured by him that he would marry her as soon as he could get a divorce from his wife. The plaintiff's mother on learning that the defendant was married objected very strongly to their relationship. Hence, an arrangement was made for him to see her mother and to convince her of his intention. The plaintiff confirmed what her sister said of the meeting the defendant had with her mother in her presence and in the presence of her sister. She said that the purchase of the house was first mentioned by the defendant to her mother during that conversation. The plaintiff said that she repeatedly wanted to leave him but he assured her that he would divorce his wife and marry her. She further testified that in order to prove that he really loved her he said that he would buy a house as a gift of love to her and that this would show that his intentions were real. The plaintiff said she believed him. They went about looking for a house and eventually found No. 30, Jalan Gaharu, which was a very convenient place for them. She said that initially he wanted to purchase the house and put it in the plaintiff's name, but subsequently he changed his mind and suggested that the property be transferred to them as joint tenants. She said that his reason for so doing was that in case she should walk out on him one day, as she had been saying that she would leave him. According to the plaintiff, the reason for the purchase of the house was that it was meant to be a gift of love to her and that he would marry her and that the house would be their matrimonial home. The purchase of the house was completed in December 1977, and after frequent persuasion by the defendant the plaintiff moved in on 1 May 1978. They lived together like husband and wife for 9 months. On 11 August 1979, the plaintiff saw the defendant going to the house with another girl. She thereupon made up her mind and left him. Before doing so, she telephoned the defendant's wife and found out that the defendant did not ask for a divorce.

The defendant in his testimony confirmed that he first met the plaintiff in 1975 when she was working in William Jacks & Company (S) Pte Ltd. Thereafter they went out together. Later, in early 1976, on being queried by the plaintiff about his marital status he told her that he was married; the plaintiff cried and he had to pacify her. He told her that 'one day we would probably be married'. At a later date, he did tell the plaintiff that he would divorce his wife. He confirmed that he had a meeting with the plaintiff's mother. He denied that at that meeting the question of purchase of a house was put forward. He said that after speaking to the plaintiff's mother, he and the plaintiff continued seeing each other and he even went to some of the family's functions. He said he wanted to buy a place where they could have some privacy and that the plaintiff was aware that they wanted a place where they could carry on their relationship. He conceded that she did threaten to leave him because he was married. With regard to the purchase of the house, the defendant said that at first he wanted to purchase it only in his name but he found that he could not do so as he was still owning a flat in Jurong Town. He therefore suggested that the plaintiff's name be inserted. He said that the plaintiff agreed that if she should leave him she would transfer her interest back to him. He said that the purchase of the house was completed in December 1977 and that the plaintiff moved into the house on 1 May 1978. He said that the plaintiff on that day came to the house crying because her mother had accused her of taking something from the house.

The plaintiff wanted to stay there. They lived together as man and wife for about 8 to 9 months. She left the house after that period as a result of a quarrel they had. Thereafter, off and on she would come back to the house. He confirmed that he did say on a few occasions that if they got married they would live in that house. He denied that the house was a gift of love to her.

At the conclusion of the hearing, the learned Judge held as follows:

> Having considered all the evidence, I find that the defendant had expressly agreed to purchase the property for the plaintiff absolutely. He caused his name to appear as a joint tenant purely in his own mind as a mechanism to have some hold over the plaintiff and to prevent her from walking out on him, which she ultimately did after discovering that he attempted to bring another woman to the property. On the evidence, she did not agree to the joint tenancy. I accept her evidence and that of PW1 which relate to the circumstances and the common intention of both parties in relation to the beneficial interest of the property. The defendant was untruthful when he claimed that the property was purchased purely as a 'love' nest and that she had agreed to transfer her joint tenancy to him if she were to walk out on him.

He then made an order declaring the plaintiff to be the owner of the property absolutely and ordered that the property be sold and the net proceeds of sale be paid to the plaintiff. He further ordered the defendant to deliver vacant possession of the property by the end of November 1989. Against that decision, this appeal is now brought.

Before us, Counsel for the defendant argued that since substantially the entire purchase price of the property was paid by the defendant, the plaintiff not having made any significant contribution towards the purchase thereof was not entitled to any share or interest in the property, notwithstanding that it is held by the plaintiff and the defendant as joint tenants. The defendant is the party solely entitled to the whole of the property. We are unable to accept this argument. The learned Judge found that the defendant had expressly agreed to give to the plaintiff the property absolutely and the property was transferred to the plaintiff and the defendant as joint tenants. Counsel has not shown that this finding of fact was in any way in error. Hence, at least to the extent of the interest of the plaintiff as a joint tenant, the gift has been perfected and is unimpeachable.

The difficult question in this appeal is whether on the findings made by the learned Judge, the plaintiff was entitled to the whole of the property in equity, the legal title being held by both of them as joint tenants. There was in this case, as found by the learned Judge, an agreement by the defendant to buy the property for the plaintiff absolutely; that it was intended to be gift of love to her. That property was bought by him, but in effectuating the gift he did not cause it to be transferred to her solely but to her and himself as joint tenants. To that extent the gift of the entire property has not been perfected and the Court will not perfect an imperfect gift. The express agreement to give the property to the plaintiff absolutely was made orally and such oral agreement cannot operate as an enforceable declaration of trust. Hence, if the plaintiff is to succeed on the claim for the entire property it must be on the basis of an implied or constructive trust of the entire property in her favour. The question therefore is whether in the circumstances of this case, there arose an implied or constructive trust.

There have been numerous decisions in England touching on similar dispute of property between married couples and unmarried couples, and we can safely take as a starting point the leading case of *Gissing v. Gissing* [1971] AC 886. That was a case of a dispute between husband and wife relating to a property. The husband bought the property in his name. The whole of the purchase price was paid by the husband partly out of his own funds and partly

out of funds which he borrowed. The wife paid for the furnishings and laying of the lawn. As for the family expenses, the husband paid for holidays and general expenses and the wife paid for her own clothes and those of their son. Subsequently, the husband left the wife, and when he left, according to the wife, he said that the house was hers and that he would pay for the mortgage instalments and outgoings which he did. On the wife's application for an order regarding her beneficial interest in the property the High Court held that the husband was the sole beneficial owner, but on appeal the Court of Appeal by a majority reversed that decision. On further appeal, the House of Lords held that the wife had made no contribution on which it could be inferred that the parties intended her to have a beneficial interest. Lord Diplock in his speech said, at pp. 904 - 905 :

> *Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based upon the proposition that the person in whom the legal estate is vested holds it as trustee upon trust to give effect to the beneficial interest of the claimant as cestui que trust.* The legal principles applicable to the claim are those of the English law of trusts and in particular, in the kind of dispute between spouses that comes before the Courts, the law relating to the creation and operation of 'resulting, implied or constructive trusts.' Where the trust is expressly declared in the instrument by which the legal estate is transferred to the trustee or by a written declaration of trust by the trustee, the Court must give effect to it. But to constitute a valid declaration of trust by way of gift of a beneficial interest in land to a *cestui que trust* the declaration is required by s. 53(1) of the Law of Property Act, 1925, to be in writing. If it is not in writing it can only take effect as a resulting, implied or constructive trust to which that section has no application.
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> *A resulting, implied or constructive trust* - and it is unnecessary for present purposes to distinguish between these three classes of trust - is *created by a transaction between the trustee and cestui que trust in connection with the acquisition by the trustee of a legal estate inland, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land.*
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> This is why it has been repeatedly said in the context of disputes between spouses as to their respective beneficial interests in the matrimonial home, that if at the time of its acquisition and transfer of the legal estate into the name of one or other of them an express agreement has been made between them as to the way in which the beneficial interest shall be held, the Court will give effect to it - notwithstanding the absence of any written declaration of trust. Strictly speaking this states the principle too widely, for if *the agreement did not provide for anything to be done by the spouse in whom the legal estate was not to be vested, it would be a merely voluntary declaration of trust and unenforceable for want of writing.* But in the express oral agreements contemplated by these *dicta* it has been assumed *sub silentio* that they provide for the spouse in whom the legal estate in the matrimonial home is not vested to do something to facilitate its acquisition, by contributing to the purchase price or to the deposit or the mortgage instalments when it is purchased upon mortgage or to make some other material sacrifice by way of contribution to or economy in the general family expenditure. What the Court gives effect to is the trust resulting or implied from the common intention expressed in the oral agreement between the spouses that if each acts in the manner provided for in the agreement the beneficial interests in the matrimonial home shall be held as they have agreed.

That was a case of a dispute between husband and wife. The legal principles to be applied are the same whether the dispute is between married or unmarried couples, but the nature of the relationship between the parties is a very important factor when considering what inferences should be drawn from the way they have conducted their affairs: per Griffith LJ in *Bernard v. Joseph* [1982] 1 Ch 391 at p. 402.

In *Eves v. Eves* [1975] 1 WLR 1338 the dispute was between an unmarried couple. In that case, the plaintiff who at the material time was under 21 started living with the defendant. A child was born and they started looking for a house and found one which was suitable to be their joint home. The house was bought in the defendant's name solely; the defendant told the plaintiff that if she had been 21 years of age he would have had the house put in their joint names as it was to be their joint home. At the time of the purchase the house was in a dilapidated condition and she did a lot of work to make the house habitable. Subsequently, the defendant left the house and married another woman. The plaintiff claimed a beneficial interest in the house. The High Court held that she had not established a claim and dismissed her application. On appeal, the Court of Appeal held that she was, in the circumstances of the case, entitled to an interest in the property. Brightman J (with whom Browne LJ agreed) said, at p. 1345:

> The defendant clearly led the plaintiff to believe that she was to have some undefined interest in the property, and that her name was only omitted from the conveyance because of her age. This, of course, is not enough by itself to create a beneficial interest in her favour; there would at best be a mere 'voluntary declaration of trust' which would be 'unenforceable for want of writing': per Lord Diplock in *Gissing v. Gissing* [1971] AC 886, 905.
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> If, however, it was part of the bargain between the parties, expressed or to be implied, that the plaintiff should contribute her labour towards the reparation of a house in which she was to have some beneficial interest, then I think that the arrangement becomes one to which the law can give effect. This seems to be consistent with the reasoning of the speeches in *Gissing v. Gissing*.

The learned Judge inferred from the evidence the link between the plaintiff's effort in carrying out the renovation work to the house and the agreement to give her an interest in the house. He said :

> But I do not for my own part find much difficulty in inferring that link. The house was found by them jointly. It was in poor condition. What needed to be done was plain for all to see, and must have been discussed. The plaintiff was to have some interest in the house, or so she was led to believe, although her name would not be on the deeds. They moved in. They both set to and put the house to right. I find it difficult to suppose that she would have been wielding the 14 lb. sledge hammer, breaking up the large area of concrete, filling the skip and doing the other things which were carried out when they moved in, except in pursuance of some expressed or implied arrangement and on the understanding that she was helping to improve a house in which she was to all practical intents and purposes promised that she had an interest.

The next relevant case is *Grant v. Edwards & Anor.* [1986] 1 Ch 638 which set the position more clearly. That again was a dispute between an unmarried couple relating to a property. The plaintiff left her husband and set up the home with the first defendant. The first defendant purchased a house and they moved into the house together with their child and two children of the plaintiff's marriage. The house was conveyed to the joint names of the first defendant and his brother; the latter had no beneficial interest therein and was joined solely to assist in obtaining the mortgage. The first defendant told the plaintiff that her name was not included in the title because it would cause her prejudice in her matrimonial proceedings, which were then pending. The first defendant paid the deposit and the mortgage instalments while the plaintiff made substantial contributions to the general household expenses. The house was subsequently damaged by fire and insurance money received was applied towards repair of the house and the remainder was placed in their joint account. The parties separated and the plaintiff claimed a beneficial interest in the house. The Court of Appeal allowed her claim.

The Court inferred from the conduct of the parties that there was a common intention that she should have an interest in the house and held that she had acted upon that intention to her detriment. Nourse LJ in his judgment said, at pp. 646 - 647:

> In a case such as the present, where there has been no written declaration or agreement, nor any direct provision by the plaintiff of part of the purchase price so as to give rise to a resulting trust in her favour, she must establish a common intention between her and the defendant, acted upon by her, that she should have a beneficial interest in the property. If she can do that, equity will not allow the defendant to deny that interest and will construct a trust to give effect to it. In most of these cases, the fundamental, and invariably the most difficult question is to decide whether there was the necessary common intention, being something which can only be inferred from the conduct of the parties, almost always from the expenditure incurred by them respectively. In this regard the Court has to look for expenditure which is referable to the acquisition of the house: see per Fox LJ in *Burns v. Burns* [1984] Ch 317, 328H - 329C. If it is found to have been incurred, such expenditure will perform the two fold function of establishing the common intention and showing that the claimant has acted upon it.
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> There is another and rarer class of case, of which the present may be one, where, although there has been no writing the parties have orally declared themselves in such a way as to make their common intention plain. Here the Court does not have to look for conduct from which the intention can be inferred, but only for conduct which amounts to an acting upon it by the claimant. And although that conduct can undoubtedly be the incurring of expenditure which is referable to the acquisition of the house, it need not necessarily be so.

Later he said at pp. 649 - 650:

> *.... it is clear that there was a common intention that the plaintiff was to have some sort of proprietary interest in 96, Hewitt Road. The more difficult question is whether there was conduct on her part which amounted to an acting upon that intention or, to put it more precisely, conduct on which she could not reasonably have been expected to embark unless she was to have an interest in the house.*
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> From the above facts and figures it is in my view an inevitable inference that the very substantial contribution which the plaintiff made out of her earnings after August 1972 to the housekeeping and to the feeding and to the bringing up of the children enabled the defendant to keep down the instalments payable under both mortgages out of his own income and, moreover, that he could not have done that if he had to bear the whole of the other expenses as well.
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> In the circumstances, it seems that it may properly be inferred that the plaintiff did make substantial indirect contributions to the instalments payable under both mortgages. This is a point which seems to have escaped the Judge, but I think that there is an explanation for that. He was concentrating, as no doubt were Counsel, on the plaintiff's claim that she herself had paid all the instalments under the second mortgage. It seems very likely that the indirect consequences of her very substantial contribution to the other expenses were not fully explored.
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> Was the conduct of the plaintiff in making substantial indirect contributions to the instalments payable under both the mortgages conduct upon which she could not reasonably have been expected to embark unless she was to have an interest in the house? I answer that question in the affirmative. I cannot see upon what other basis she could reasonably have been expected to give the defendant such substantial assistance in paying off mortgages on his house. *I therefore conclude that the plaintiff did act to her detriment on the faith of the common intention between her and the defendant that she was to have some sort of proprietary interest in the house.*

Sir Nicolas Browne-Wilkinson V-C, the other member of the Court, said that mere agreement between the parties that both are to have beneficial interest is sufficient proof of common intention: (at p. 654). Mere common intention by itself, whether proved by direct evidence or by inference from conduct of the parties is not enough : the claimant has also to prove that she has acted to her detriment in the reasonable belief that by so acting she was acquiring a beneficial interest (at p. 656).

Both *Eves v. Eves* and *Grant v. Edwards* were decided on the express representation by the party in whom the legal estate was vested as evidence of an express agreement that the other party was to have a share in the property in question and not on the basis of any inference of a common intention from the conduct of the parties. In the recent case of *Lloyds Bank Plc v. Rosset & Anor.* [1991] 1 AC 107 the House of Lords emphasized the crucial distinction between the effect of evidence on the one hand which is capable of establishing an express agreement or representation that the party in whom the legal estate is not vested is to have an interest in the property and evidence on the other hand of conduct alone as a basis for an inference of a common intention to share the property and giving rise to a constructive trust. Lord Bridge of Harwich said, at pp. 132-133 :

> The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, *there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially*. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. *Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.*
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> In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the Court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do.

In that case the husband and wife wished to purchase a property, and the purchase was to be funded with money from the husband's family trust. In consequence, the trustee insisted that the property be purchased in the husband's sole name. Prior to the execution of the contract, the vendor gave possession of the house to the husband and wife and in consequence the wife herself carried out some decorating work and obtained some materials and pressed the builders on to complete the renovation. Subsequently the purchase of the house was completed, the wife making no financial contribution to the purchase of the house or the cost of renovation. The husband obtained some funds from the bank to finance the cost of renovation and executed a legal charge on the property. About a year later the husband left the wife following matrimonial difficulties, and the wife and children remained in occupation of the property. To the claim by the bank for possession and an order for sale the wife claimed that she had a beneficial interest in the property under a constructive trust.

The House of Lords held that the wife's activities in relation to the renovation of the property were not sufficient to justify an inference of a common intention that she should have a beneficial interest in the property and the claim that the husband held the property on a constructive trust for himself and the wife could not be supported.

In all these cases the legal estate of the property in question was vested in one party and the other was claiming merely a beneficial interest therein. In the instant case, the legal estate of the property is held by the plaintiff and the defendant as joint tenants, and the question is whether on the basis of a constructive trust the plaintiff alone is entitled to the whole of the beneficial interest in the property. The same principles as applied in those cases are equally applicable here. It is necessary at this stage to revert once again to the findings made by the learned Judge and the facts before him. The learned Judge found that the defendant had expressly agreed to purchase the property for the plaintiff absolutely and that the defendant caused his name to appear on the title as a joint tenant as a mechanism to have some hold over the plaintiff and to prevent her from walking out on him. There was therefore a clear finding of a common intention that the plaintiff was to have the property absolutely. In reaching this finding the learned Judge accepted the evidence of the plaintiff and that of her sister, Rosie Woon, relating to the circumstances and the common intention contained in the express agreement by the defendant in relation to the beneficial interest of the property, and rejected the evidence of the defendant.

There was, however, no finding by the learned Judge that the plaintiff had acted upon that common intention to her detriment. It was also not the case of the plaintiff that acting upon that common intention she moved into the house and stayed with the defendant. Her reasons for moving into the house and staying with him were given in her affidavit affirmed on 13 October 1982. Paragraphs 13 and 14 thereof stated :

> 13. About the time of purchase of the said property, there were many attempts by the defendant to persuade me to move into the house, and live with him, assuring me that he was going to divorce his wife within the next few months, and that upon the divorce being made absolute he would marry me: these attempts at persuasion increased sometime in May 1973.
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> 14. Relying on his representations, I moved into the said property, and lived together as his 'wife' for about 9 months from about May 1978 to about February 1979, and for that duration looked after him, and maintained the house. He did tell me during the course of staying with him that there were some last minutes hitches to his divorce matter, but the same, he reassured me, would be ironed out within reasonable time.

She reaffirmed this position in her evidence given in cross-examination, when she said :

> I really loved him. He persuaded me so much over 5 months. So, I agreed and went to stay to live in the house. Also, I thought the house would be our matrimonial home one day.

Hence, in this case, it cannot be maintained that her moving into the house and staying with the defendant amounted to acting upon the common intention that the house was hers absolutely. That was not her case on the basis of her evidence and the arguments advanced on her behalf. Nor she did found her claim on that basis.

It is significant that the plaintiff in the originating summons did not claim the entire property but such interest as the Court thinks just. In her affidavit affirmed on 6 September 1983 she seemed to suggest (in paras. 7 and 19 thereof) that she was entitled to one half of the share of the property. In our judgment, her interest in the property is that of a joint tenant with the defendant; that is the extent of her interest at law and in equity.

We accordingly vary the judgment of the High Court to the extent as follows :

(a) that the plaintiff and the defendant own the property known as No. 30, Jalan Gaharu, Singapore as joint tenants.

(b) that the property be sold and the net proceeds of sale be paid to the plaintiff and the defendant in equal proportions.

In all other respects, the judgment of the High Court is affirmed.

We now come to the question of costs of this appeal. These proceedings would not have been brought but for the unreasonable conduct of the defendant in resolving the dispute. In other respects too his conduct has been reprehensible. In any event, none of the arguments made on his behalf succeeded before us. In the circumstances, we make no order as to the costs of the appeal. There will be the usual consequential order that the security for costs be refunded to the defendant or his solicitors.

Also found at [1991] 3 CLJ 3040